



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 27, 1995

Mr. Mark S. Houser  
Vial, Hamilton, Koch & Knox, L.L.P.  
1717 Main, Suite 400  
Dallas, Texas 75201

OR95-236

Dear Mr. Houser:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30766.

The City of Highland Village (the "city") received a request for (1) your law firm's billing to the city for the month of October 1994, (2) a report turned over to the *Lewisville News*, and (3) information about money paid reserve officers. You indicate the city has released the records about money paid to reserve officers, but you contend that the billing records and information about the report are excepted from disclosure under section 552.103(a). You have submitted to this office for review copies of those records.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city has shown that litigation is pending. You submitted to this office an amended petition that shows the city and the city manager have been sued for, among other things, malicious prosecution and retaliation against certain employees. A city police officer also has filed a complaint of sexual harassment and sexual discrimination against the city with the Equal Employment Opportunity Commission ("EEOC"). Information about that officer and her allegations is an issue in the lawsuit that was filed against the city.

We assume that the portions of the submitted billing records that you highlighted are the only sections that you wish to withhold from disclosure. We agree that some of the highlighted billing records are related to the subject of the litigation and may be withheld from disclosure. The sections that are bracketed may be withheld from disclosure.

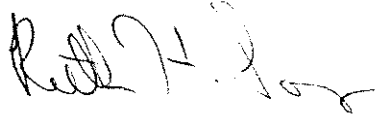
You also submitted to this office a copy of a *Lewisville News* article that was published November 2, 1994, offense report information, and other records. However, it appears that the offense report may have already been disclosed to the newspaper. As a general rule, a governmental body may not selectively disclose information to one member of the public and not another. Open Records Decision No. 490 (1988) at 2. Therefore, if the offense report was disclosed to the newspaper it must now be disclosed to the requestor. In any event, we assume that the newspaper article and first page offense report information were submitted to this office for informational purposes only, since first page offense report information is generally public, *see Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist. 1975), *writ ref'd n.r.e. per curiam*, 586 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976), and the newspaper article was published and apparently seen by the requestor.

Our review of the other records submitted to this office indicates that they are related to the subject of the pending lawsuit. As discussed previously, if information has already been disclosed to the newspaper, it may not now be selectively withheld from disclosure. If the records at issue have not already been disclosed to the newspaper, they may be withheld from disclosure pursuant to section 552.103(a). In making this determination, we assume that the opposing parties to the pending litigation have not previously had access to the records. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) usually ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. The section 552.103(a) exception also is discretionary with the governmental entity asserting the exception. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4. However, the information providing home addresses and home telephone numbers of police officers may not be disclosed even after litigation has concluded. Section 552.117(1)(B) of the Government Code protects from disclosure home addresses and home telephone numbers of peace officers.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/MAR/rho

Ref.: ID# 30766

Enclosures: Submitted documents

cc: Ms. Sheila Weimer  
1646 Sunswept  
Lewisville, Texas 75067  
(w/o enclosures)